

At the February 2002 hearing, respondent and its insurance carrier presented additional medical reports from orthopedic surgeon Greg A. Horton, M.D., in support of their contention that the foot injury was not caused by claimant's employment. They argue Dr. Horton is the more credible expert and that he believes claimant's foot injury was not caused by her work. Accordingly, respondent and its insurance carrier request the Board to reverse the February 28, 2002 Order and find that claimant has failed to prove that her foot injury arose out of her employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

The February 28, 2002 Order for Compensation should be affirmed.

In the last appeal to this Board, the Board affirmed Judge Avery's September 5, 2001 preliminary hearing Order in which the Judge granted claimant benefits. The Board found Dr. Brian K. Ellefsen's opinions persuasive. According to Dr. Ellefsen, who is the treating physician and the surgeon who operated on claimant's foot, claimant's stress fracture was caused by the work that she was performing for respondent. The doctor wrote in his May 24, 2001 report:

I wanted to make it clear that I am very familiar with the work requirements of a Nurses Aid[e], having been in private practice nine (9) years and hospital work where I have observed the duties of a Nurses Aid[e] closely, as well as visiting many of the local Nursing Homes, where the Nurses Aid[e]s are doing the majority of the work.

It is my professional medical opinion, with a reasonable degree of medical certainty that Mrs. Teres[s]a Armstrong's job activities, which required her to squat, knee[l] and stoop, resulting in hyperextension of the MP joint which caused a stress fracture of the medial sesamoid bone, over time from repetitive trauma which resulted in the fracture of the medial sesamoid bone, on or about May 10, 2000 which required the treatment she had at the time that she saw us and the surgical intervention which was ultimately the excision of her medial sesamoid bone of her great toe at the level of the MP joint of her right foot.

...

... Once again, I do not feel it was the walking down the hallway in May of 2000 that caused the medial sesamoid fracture. It was the repetitive micro-trauma resulting in a stress fracture to the medial sesamoid of her right toe that occurred first and the date of May 10, 2000 was simply the date in which this became a fracture of the medial sesamoid which resulted in her pain, causing her to ambulate

on crutches and essentially non-weight bearing for a period of nearly one (1) year prior to her surgical intervention.

At the February 26, 2002 preliminary hearing, respondent and its insurance carrier introduced a January 24, 2002 report from Dr. Greg A. Horton. Dr. Horton, who is an orthopedic surgeon with Kansas University Physicians, Inc., believes that it is possible that repetitive activities may have contributed to claimant's fracture but when repetitive activity is a significant contributing factor individuals will typically have pain or inflammation before they experience intense pain. And, according to Dr. Horton, claimant's injury did not follow that pattern. The doctor wrote, in part:

. . . I've taken out fragmented sesamoids from people who has [sic] sustained this as a result of repetitive stress activities. Most recently I've removed a sesamoid from a long distance cross country runner who had a stress fracture as a result of repetitive impact type activities. I've also removed fragmented sesamoids from people who have developed this in the absence of a distinct injurious event. So, in answer to your question, it is indeed possible that repetitive activities may have contributed to this problem. However, it is my experience that when a repetitive type syndrome is a significant contribution problem, patients typically will have symptoms of pain or inflammation that predate the onset of such intense pain. Indeed, all aspects of her ambulation both at and away from the workplace may have contributed to development of this problem.

You've asked whether any particular motion may have caused a predisposition for this problem. Any activity that repetitively loads the sesamoid apparatus could be responsible for this. Running and impact activities can cause such a problem. Persistent squatting could potentially contribute to this. However, she denies any symptoms in her foot prior to this episode of a pop on May 10, 2000.

Again, I think she did have an acute event on this date. It seems from her history and her response to treatment that her sesamoid apparatus was the source of her pain. Dr. Ellefsen has said that the repetitive nature of her job is the cause. Again, I don't see anything specific as far as the circumstance of her employment that would have given her significant predisposition to this. . . .

Despite Dr. Horton's more recent opinions, the Board remains persuaded that claimant's foot injury was caused by the repetitive trauma that she sustained during the long hours that she worked for respondent. That conclusion is based upon Dr. Ellefsen's opinions, along with claimant's testimony about the inordinately long hours and double shifts that she worked for respondent and that her feet were tired and sore for approximately two months before she experienced the pop in her foot on May 10, 2000. Accordingly, the Board affirms the February 28, 2002 Order for Compensation.

WHEREFORE, the Board affirms the February 28, 2002 Order for Compensation entered by Judge Avery.

IT IS SO ORDERED.

Dated this ____ day of April 2002.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Gregory D. Worth, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Workers Compensation Director